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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/519,248	03/06/2000	Lee S. Weinblatt	990456/TL	8252

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New York, NY 10017

EXAMINER

VUONG, QUOCHIE B

ART UNIT	PAPER NUMBER
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2685

DATE MAILED: 02/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/519,248

Applicant(s)

WEINBLATT ET AL.

Examiner

Quochien B Vuong

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 August 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 2-11, 13, 16-19, 21-30 and 35-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-11, 13, 16-19, 21-30, 35-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>08/25/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

This action is in response to applicant's response filed on 08/12/2004. Claims 2-11, 13, 16-19, 21-30, and 35-39 are now pending in the present application. **This action is made final.**

#### ***Information Disclosure Statement***

1. The information disclosure statement (IDS) submitted on 08/25/2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner. However, one of the reference is missing EP 0305124 A. Applicant is requested to submit a copy of that reference in order for the examiner to consider. In addition, it is noted that there is only one sheet of the IDS (sheet 1 of 2) received by the Office; sheet 2 of 2 has not received by the Office.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 2-11, 13, 16-19, 21-30, and 35-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kiewit (US 4,930,011) in view of Thomas (US 5,768,680).

Regarding claim 2, Kiewit (figure 1) discloses an apparatus (10) for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: stationary means (14-26) including transmitter means (14) for periodically emitting a query signal (polling signal) and positioned at a reception location with reproduction equipment (28) to perform the program (column 3, lines 37-40); a plurality of portable means (12) carried by members of the audience, including first detecting means to detect said query signal and, responsive thereto, emit respective audience-member identification signals (column 2, lines 15-34, column 3, lines 27-33, 37-40); and said stationary means including second detecting means (14) to detect said identification signals (column 3, lines 48-50). Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Thomas (figures 1-2) discloses a programming signal source in combination with a surveying code, and a stationary means comprises detecting means for detecting said surveying code and

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associating said surveying code with said identification signals (column 3, lines 33-56; column 4, line 55 - column 5, line 34. In this case "identification signal" is read on the claimed "survey signal"). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Thomas to Kiewit to monitor what program the audience is watching or listening to (as suggested by Thomas, column 3, lines 50-62).

Regarding claim 16, Kiewit (figure 1) discloses a method for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: storing personal identification data in a plurality of portable devices (12) to be carried by members of the audience (column 2, lines 15-34, column 3, lines 27-33); periodically emitting a trigger signal at a reception location (column 3, lines 37-40); transmitting said identification data from the portable devices of audience members in attendance at the reception location in response to said trigger signal (column 3, lines 37-40), and detecting said transmitted identification data (column 3, lines 48-50). Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Thomas (figures 1-2) discloses a programming signal source in combination with a surveying code, and a stationary means comprises detecting means for detecting said surveying code and associating said surveying code with said identification signals (column 3, lines 33-56; column 4, line 55 - column 5, line 34. In this case "identification

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signal" is read on the claimed "survey signal"). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Thomas to Kiewit to monitor what program the audience is watching or listening to (as suggested by Thomas, column 3, lines 50-62).

Regarding claim 21, Kiewit (figure 1) discloses an apparatus (10) for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: a plurality of portable means (12) carried by members of the audience, including means to periodically emit respective audience-member identification signals (column 2, lines 15-34; column 3, lines 27-33, 37-40); and stationary means (14-26) positioned at a reception location with reproduction equipment to perform the program (28), said stationary means including means (14) to detect said identification signals (column 3, lines 48-50). Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Thomas (figures 1-2) discloses a programming signal source in combination with a surveying code, and a stationary means comprises detecting means for detecting said surveying code and associating said surveying code with said identification signals (column 3, lines 33-56; column 4, line 55 - column 5, line 34. In this case "identification signal" is read on the claimed "survey signal"). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Thomas to

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Kiewit to monitor what program the audience is watching or listening to (as suggested by Thomas, column 3, lines 50-62).

Regarding claim 36, Kiewit (figure 1) discloses a method for identifying members of an audience tuned to a program broadcast by a programming signal source, comprising: storing personal identification signals in a plurality of portable devices (12) to be carried by members of the audience (column 2, lines 15-34; column 3, lines 27-33); periodically transmitting said identification signals from the portable devices (column 3, lines 37-40); and detecting the identification signals from those of said portable devices that are carried by audience members in attendance at a reception location (column 3, lines 48-50). Kiewit does not disclose the broadcast program is transmitted by the programming signal source in combination with a surveying code, and the stationary means further comprises third detecting means for detecting said surveying code and associating said surveying code with said identification signals. However, in the same field of endeavor, Thomas (figures 1-2) discloses a programming signal source in combination with a surveying code, and a stationary means comprises detecting means for detecting said surveying code and associating said surveying code with said identification signals (column 3, lines 33-56; column 4, line 55 - column 5, line 34. In this case "identification signal" is read on the claimed "survey signal"). Therefore, it would have been obvious for one having ordinary skill in the art at the time the invention was made to adapt the teaching of Thomas to Kiewit to monitor what program the audience is watching or listening to (as suggested by Thomas, column 3, lines 50-62).

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Regarding claims 3, 17, 22, and 37, Thomas discloses the third detecting means associates the surveying code which is detected at a given time with the identification signals detected at said given time (column 3, lines 33-37).

Regarding claims 4 and 23, Thomas discloses the stationary means includes means to store said surveying codes (column 4, line 61 - column 5, line 11).

Regarding claims 5 and 24, Kiewit disclose the stationary means includes means to store said identification signals (column 3, line 54 - column 4, line 8).

Regarding claims 6 and 25, Thomas disclose the reproduction equipment includes fourth detecting means to detect and retransmit the surveying code (column 4, lines 61-66; column 5, lines 12-26), and Kiewit discloses the third detecting means is adapted to receive such retransmitted surveying code (column 3, lines 37-54).

Regarding claims 7 and 26, Kiewit discloses each of said portable means emits a unique identification signal (column 3, lines 27-30).

Regarding claims 8 and 27, Kiewit discloses the portable means include means to prevent the identification signals detected by the second detecting means from interfering with each other in being detected by said stationary means (column 4, lines 41-46).

Regarding claims 9, 18, 28, and 38, Thomas discloses means for setting a time interval during which the surveying codes detected by the third detecting means are associated with the identification signals detected by the second detecting means (column 3, lines 32-37).



Regarding claims 10, 19, 29, and 39, Thomas discloses a first memory means to store the detected surveying codes with the associated identification signals during said time interval and a second memory for storing data retrieved from the first memory upon termination of the time interval (column 4, line 66 -column 5, line 11). And Kiewit discloses a first memory means to store the detected surveying codes with the associated identification signals during said time interval and a second memory for storing data retrieved from the first memory upon termination of the time interval (column 3, line 54 - column 4, line 8).

Regarding claims 11 and 30, Kiewit discloses download means responsive to an actuation signal for transferring data stored in said second memory to a remote processing station (column 4, lines 3-8).

Regarding claim 13, Thomas disclose the reproduction equipment includes fourth detecting means to detect and retransmit the surveying code (column 4, lines 61-66; column 5, lines 12-26), and Kiewit discloses the third detecting means is adapted to receive such retransmitted surveying code (column 3, lines 37-54).

Regarding claim 35, Kiewit discloses the stationary means includes the step of storing the identification signals (column 3, line 54 - column 4, line 8).

### ***Response to Arguments***

5. Applicant's arguments filed 08/12/2004 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the motivation is found in Thomas reference for monitoring what program the audience is watching or listening to (how audiences tune into, stay with, or turn away from, see column 3, lines 50-62).

6. Applicant's arguments, see page 12, filed 08/12/2004, with respect to rejection of claims 2, 16, 21, and 36 under 35 USC 103(a) as being obvious over Kiewit in view of Weinblatt have been fully considered and are persuasive. The rejection of claims 2, 16, 21, and 36 has been withdrawn.

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Quochien B Vuong whose telephone number is (703) 306-4530. The examiner can normally be reached on M-F 9:30-18:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edward Urban can be reached on (703) 305-4385. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**QUOCHIE B. VUONG**  
**PRIMARY EXAMINER**

Quochien B. Vuong

Jan. 19, 2005.